

REMARKS

I. Status of the Claims

Applicant submits this Amendment in reply to the Office Action dated December 27, 2006. Claims 55-87 are pending in this application, with claims 55, 74, 75, and 87 being independent. By this Amendment, Applicant has amended claims 75 and 87 to ensure that the claims consistently recite a "sleeve" throughout. In addition, claim 87 has been further amended to recite that "the distal portion" of the core includes the coating. The claim amendments are supported by the originally filed specification and drawings, and no new matter has been entered.

In the Office Action dated December 27, 2006, the Examiner rejected claims 55, 56, 58, 62-68, 70, 74-77, and 83-87 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent Application Publication No. 2001/0031971 to Dretler et al. ("Dretler"). Claims 69, 71, and 72 were rejected under 35 U.S.C. § 102 as allegedly being anticipated by, or, in the alternative, as being obvious over Dretler. Finally, claims 55-87 were rejected as being unpatentable on the grounds of nonstatutory obviousness-type double patenting in view of U.S. Patent No. 6,740,096 alone or in view of Dretler.

While Applicant does not necessarily agree that the double patenting rejection is proper, solely in the interests of expediting the prosecution of this application, Applicant submits a Terminal Disclaimer herewith. The submission of the Terminal Disclaimer in no way manifests an admission by Applicant as to the propriety of the double patenting rejection set forth in the final Office Action. Nor does Applicant subscribe to the various characterizations and assertions regarding the pending claims and the cited references set forth in that double patenting rejection. See M.P.E.P. §804.02 *citing Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d

1392 (Fed. Cir. 1991) (“In legal principle, the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection”). Should the need arise at a later date, Applicant reserves the right to present arguments regarding the merits of the double patenting rejection and the nonobviousness of application claims 55-87 over certain claims in U.S. Patent No. 6,740,096. Accordingly, Applicant respectfully requests withdrawal of the double patenting rejection.

Regarding the outstanding anticipation and obviousness rejections, Applicant traverses these rejections for all the reasons that follow.

II. The Independent Claims are Neither Anticipated Nor Rendered Obvious in View of Dretler

The Office Action dated December 27, 2006 lists each of independent claims 55, 74, 75, and 87 among the claims allegedly anticipated by Dretler. (See December 27, 2006, Office Action, p. 2.) Independent claim 55 recites a medical device including, *inter alia*, a core element including a first portion extending substantially longitudinally and a second portion including at least one loop and a helical coil tapering from a larger diameter at a proximal end thereof to a smaller diameter at a distal end thereof. The at least one loop is located at a distance from the proximal end of the helical coil that is substantially greater than a distance between wound sections of the helical coil.

Page 2 of the December 27, 2006 Office Action alleges that Dretler teaches a medical device according to claim 55. *Id.* The first six lines of text under heading 3 list all the recitations of claim 55, yet the Office Action fails to point to any text or drawing reference numbers in Dretler as corresponding to the listed claim elements. *Id.* Page 4 of the Office Action includes an annotated reproduction of FIGS. 5A and 5B from

Dretler, however, the only claim elements referenced are core element and helical coil. No other claim recitations are referenced.

Regarding claim 55, Dretler fails to teach or suggest at least the features of the claimed “second portion including at least one loop” where the loop “is located at a distance from the proximal end of the helical coil that is substantially greater than a distance between wound sections of the helical coil.” At most, Dretler only discloses a single helical coil portion 14. There is no disclosed structure corresponding to a loop disposed in relation to a helical coil as claimed. Accordingly, claim 55 is not anticipated by Dretler.

Independent claim 74 recites a medical device including, *inter alia*, a core element including a first portion extending substantially longitudinally and a second portion including at least one loop and a helical coil. A wound section of the at least one loop is disposed substantially perpendicular to a wound section of the helical coil.

Claim 74 is supported by at least FIGS. 6 and 7 of the present application. As seen in those exemplary embodiments, a wound section of loop 610 is disposed substantially perpendicular to a wound section of the helical coil 130. The Office Action fails to point to any text or drawing reference numbers in Dretler as corresponding to the listed elements of claim 74. And, Dretler fails to teach or suggest at least the claimed feature of at least one loop disposed substantially perpendicular to a wound section of the helical coil. At most, Dretler only discloses a single helical coil portion 14. Accordingly, claim 74 is not anticipated by Dretler.

Regarding claims 75 and 87, both claims (as amended) recite a medical device including, *inter alia*, an elongate sleeve, an elongate core having a distal portion forming

a plurality of coils, and wherein the distal portion of the elongate core includes a coating having a color different from that of the sleeve.

Dretler fails to teach or suggest a device having these features. While Dretler does disclose providing a colored portion 70 along a “proximal” portion of core 10 (see, e.g., paragraph [0032]), there is no disclosure provided regarding any difference in color between tubular sheath 24 and a distal portion of core 10, including for example coiled portion 14. Accordingly, claims 75 and 87 are not anticipated by Dretler. Such a relative color arrangement as presented in claims 75 and 87 is advantageous in that an operator can easily distinguish the coiled portion of the medical device from the sleeve under internal endoscopic viewing, for example. That is, the operator can differentiate between different portions of the medical device and confirm coil deployment, while maintaining a constant view of the surgical site.

For at least the reasons presented above, a *prima facie* case of anticipation or obviousness has not been established. Accordingly, Applicant submits that independent claims 55, 74, 75, and 87, as well as the claims dependent thereon, are allowable over the applied prior art. Withdrawal of the rejections based on Dretler and allowance of the pending claims is respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 22, 2007

By: David M. Ruddy
David M. Ruddy
Reg. No. 53,945

Attachments: Terminal Disclaimer signed by Attorney of Record, David M. Ruddy, Esq.